REMARKS

1. Applicant thanks the Examiner for his remarks and suggestions which have greatly assisted Applicant in responding.

2. **35 U.S.C. § 112**

Claims1-29, 31 and 32 are rejected under 35 U.S.C. § 112, 1st paragraph as failing to comply with the written description requirement.

Claims 1, 6, 16 and 31: The Examiner alleges that the expression "common cache" is unsupported by the specification. Applicant respectfully traverses the present allegation and incorporates herein its remarks from the November 22, 2006 response by this reference thereto. Nevertheless, in the interest of advancing prosecution of the Application, Applicant amends the independent claims to describe a "pre-buffer cache." Support for the amendment is found at ¶¶ 0027, 0030 and 0054.

Claim 26: The Examiner alleges that the expression "size of said buffer [are] specified by said user" is unsupported by the specification. Applicant respectfully traverses the present allegation. While the specification doesn't explicitly describe that the user specifies buffer size, it is implicit that, if buffer size is to be specified, some actor has to specify buffer size. In ¶ 0030, it is described that the number of clips to cache in advance can be specified. The ordinarily-skilled practitioner would clearly understand this to be a user-configurable parameter. In the same sentence, the specification describes that the size of the buffer can be specified. Configuring a buffer size by means of a user interface is a relatively commonplace operation. Accordingly, mentioning that buffer size can be specified in the same sentence where it is described that an obviously user-configurable parameter can be specified would convey to the ordinarily-skilled practitioner that buffer size was user-configurable. Nevertheless, in the interest of advancing prosecution of the application, claim 26

is amended to read that the buffer cache is specified. The present rejection is therefore overcome.

2. **35 U.S.C. § 103**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2143.

Claims 1, 6 and 16 stand rejected as being unpatentable over U.S. Patent No. 6,502,194 ("Berman") in view of U.S. published application no. 2001/0030660 ("Zainoulline") and further in view of U.S. published application no. 2002/0059237 ("Kumagai").

Claim 1: The Examiner relies on col. 12, lines 25-30 as teaching "wherein as soon as said target song starts to play, deleting any pre-cached song preceding said target song in said pre-determined sequence." Applicant respectfully disagrees. The Examiner reasons that in view of the cited portion of Berman, Berman inherently teaches that data that had been in a buffer before the target song is downloaded into the buffer is overwritten.

However, all this means is that a portion of some song that had occupied the buffer before the target song is overwritten. It may not have even been a song in the current playlist. Thus, it is incorrect that the cited portion of Berman inherently teaches "wherein as soon as said target song starts to play, deleting any pre-cached song preceding said target song in said pre-determined sequence." The most that can be said of Berman is that Berman may delete a portion of one song that preceded the target song in the sequence. However, it is impossible, given the teachings of col. 12, line 49 to line 52 that Berman teaches "wherein as soon as said target song starts to play, deleting any pre-cached song preceding said target song in said pre-determined sequence."

The remaining references in the combination add nothing to the teachings of Berman. Accordingly, the present rejection is improper because the combination fails to teach or suggest all elements of the claimed invention.

In spite of the foregoing, claim 1 is amended to describe "after said target song starts to play, deleting any pre-cached song preceding said target song in said pre-determined sequence after elapse of a predetermined, configurable time interval." Support for the amendment is found in claim 29 and in the specification at ¶¶ 0065-0066.

The Examiner alleges that Berman teaches the subject matter of claim 29: "a function used to maintain skipped pre-buffered data for a configurable period of time, wherein after said period of time said skipped pre-buffered data is deleted." Applicant respectfully disagrees. The ordinarily-skilled practitioner, reading the expression "configurable" would understand it to mean that a parameter or a preference is set, or a value is specified for an attribute, in a deliberate fashion. In Berman, there is no process of configuration: no parameters or preferences are set. The user simply takes an action that sets a process in motion. The user has no knowledge of the state change that causes the data to be overwritten, nor does the user have any knowledge of the result of the state change, the data being overwritten. The user hasn't any intention to bring about that result—he just wants to play music. Thus, it is fanciful to posit that the user, in playing a song, is "configuring" the period of time, wherein after said period of time said skipped, pre-buffered data is deleted. The ordinarily-skilled practitioner would not find that any configuration has taken place.

While the Examiner is permitted to interpret references broadly, the Examiner's interpretation must be reasonable. Here, the Examiner attempts to support a rejection using a highly unlikely interpretation of the reference that is completely at odds with what the ordinarily-skilled practitioner would understand the reference as teaching. The Examiner's interpretation of the reference teachings is therefore unreasonable.

Even if the Examiner's interpretation of Berman were not so far-fetched, it is incorrect. When the user takes an action to play a song, only the data for that song are overwritten. Although it is possible, that when a user plays a song, a portion of a song that previously occupied the buffer could be overwritten, all skipped, pre-buffered data is not overwritten by the user skipping to another song in the sequence. As described at col. 12, lines 49-51, skipped songs remain in the playback unit memory so that the user can return to the skipped song and listen to it.

Even if the Examiner's position had not been otherwise improper, the amendment to claim 1 also describes that the time interval is "predetermined." ¶ 0066 describes, "If the application is configured to keep the skipped pre-buffered data for a short period of time, for example, for 10 seconds . . . ." It is clear from the context, that the exemplary interval of 10 seconds is predetermined, and that the software application has been configured or set to keep the data for that period. Even in view of the Examiner's interpretation, there is no teaching or suggestion in Berman that the configurable time interval the Examiner purports Berman to teach is predetermined. The remaining references in the combination add nothing to Berman. Accordingly, there is no teaching or suggestion of the subject matter of claim 29 in the combination.

Claims 6 and 16 have also been amended to include a portion of the subject matter from claims 7 and 17 respectively. Because claims 1, 16 and 16 have been amended to incorporate the subject matter of claim 29, they are deemed allowable. Claim 31 has been amended in similar fashion to claims 1, 6 and 16

Claim 29 is cancelled from the application. In view of their dependence from allowable parent claims, the dependent claims are deemed allowable without any separate consideration of their merits.

3. The above amendments are made only to describe the invention in greater detail, in the interest of advancing prosecution of the application. They

do not signify agreement by Application with the Examiner's position. Nor do they indicate intention to sacrifice claim scope. Applicant expressly reserves the right to pursue patent protection of a scope it reasonably believes it is entitled to in one or more continuing applications.

4. For the record, Applicant respectfully traverses any and all factual assertions in the file that are not supported by documentary evidence. Such include assertions based on findings of inherency, assertions based on official notice, and any other assertions of what is well known or commonly known in the prior art.

CONCLUSION

In view of the foregoing, the claims are deemed to be in allowable condition. Applicant therefore earnestly requests reconsideration and prompt allowance of the claims. Should the Examiner have any questions regarding the Application, he is urged to contact Applicant's attorney at 650-474-8400.

Respectfully submitted,

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